IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6001 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B. MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

DILIPKUMAR K. BHATT TRAFFIC CONTROLLER,

Appearance:

1. Special Civil Application No. 6001 of 2002

MR HARDIK C RAWAL for Petitioner No. 1

MR PRABHAKAR UPADYAY for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/08/2002

ORAL JUDGEMENT

Heard the learned advocates.

The respondent-workman was subjected to

departmental proceedings on the ground that he had not issued tickets to a passenger, while he was on duty as Conductor. After conclusion of the inquiry, he was subjected to penalty in reduction of two stages in his original pay. The concerned workman, thereafter, raised industrial dispute which was referred to Industrial Tribunal, Ahmedabad and the same was numbered as Reference (IT) 395 of 1999. The Tribunal interfered with the said order of penalty and while exercising power under section 11-A of the Industrial Disputes Act, 1947, passed an order to the effect that instead of reduction of two stages in the basic-pay, the concerned workman's pay should be reduced by one stage in his original pay. Thus, the Tribunal interfered with the aforesaid punishment order and imposed penalty of withholding of one stage in his original basic pay without future effect. The S.T Corporation, being aggrieved by the said judgment and award has moved this Court by way of present writ petition.

It is argued by Mr. Raval that since the misconduct against the concerned workman is proved, it is not a case in which the Tribunal should exercise power under Section 11-A of the Industrial Disputes Act, 1947. It is required to be noted that the Tribunal itself has found in paragraph 13 of the Award that the respondent-workman failed to issue tickets by way of mistake. It is also required to be noted that even in past, on 22 occasions, the workman was found to have committed similar misconducts related to non-issuance of tickets to the passengers. Inspite of the aforesaid fact, the Industrial Tribunal interfered with the order and in exercise of power under section 11 of the I.D Act, modified the punishment. Mr. Raval contended that power under section 11 of the I.D Act was not required to be exercised in the facts of the present case, when the disciplinary authority itself has taken lenient view in the matter. Considering the facts and circumstances of the case, there was no scope for invoking provisions of section 11-A of the I.D Act. The Tribunal has committed error of law in invoking the said provision in the instant case, especially when the disciplinary authority itself had taken liberal view of the matter. Thus, considering the past record of the employee, such powers were not required to be exercised in the instant case by the Tribunal. In that view of the matter, the impugned order dated 29th April, 2001 passed by the Industrial Tribunal in Reference [IT] No. 395 of 1999 is found to be absolutely unsustainable, and accordingly, the said Award dated 29th April, 2001 is set-aside. The matter stands allowed. The penalty imposed by the disciplinary

authority is restored. Rule is made absolute with no order as to costs.

[P.B Majmudar, J.]

Prakash*